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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91175280
Party	Plaintiff Magnadyne Corporation
Correspondence Address	Matthew R. Mowers BROOKS KUSHMAN P.C. 1000 Town Center, 22nd floor Southfield, MI 48075 UNITED STATES mmowers@brookskushman.com, sgibbons@brookskushman.com
Submission	Reply in Support of Motion
Filer's Name	Matthew R. Mowers
Filer's e-mail	mmowers@brookskushman.com, lscott@brookskushman.com
Signature	/mrm/
Date	12/12/2007
Attachments	Magnadyne Reply.PDF ( 14 pages )(326421 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of  
Trademark Application on Serial No. 76/655,958  
Mark: MOVIEVISION

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MAGNADYNE CORPORATION	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91175280
	)	
MOVIEVISION, INC.	)	
	)	
Applicant.	)	

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P.O. Box 1451  
Alexandria, VA 22313-1451

**OPPOSER’S REPLY IN SUPPORT OF MOTION FOR  
EXTENSION OF OPPOSER’S TESTIMONY PERIOD**

Opposer, Magnadyne Corporation (“Magnadyne”) files this reply to Applicant’s response (“Applicant’s Response”) to Opposer’s Motion for Extension of Testimony Period. Applicant’s Response was untimely filed, contains factual misstatements and inaccuracies and fails to address any prejudice to Applicant by the Trademark Trial and Appeal Board’s (“the Board”) granting of the requested extension.

As such, Magndayne respectfully requests that the Board extend Opposer’s testimony period and all subsequent dates established in accordance with Rule 2.128(a)(1) of the Trademark Rules of Practice for a period of sixty (60) days from the ruling on the present motion, and reset the remaining dates thereafter. Magnadyne submits this Reply in Support of

Magnadyne's Motion for Extension of Opposer's Testimony Period ("Magnadyne's Motion") along with the Declaration of Matthew R. Mowers for the Board's consideration.

**A. Applicant's Response was not Timely Filed**

Applicant failed to mail Applicant's Response within the required response period. As such, the Board should not consider Applicant's untimely filed Response to Opposer's Motion. Magnadyne's Motion was filed with the Board on November 8, 2007 and served on Applicant by first class mail, requiring Applicant to respond to Magnadyne's Motion by November 28, 2007.

37 C.F.R. 2.197(1)(I) states that the Office will treat correspondence as being timely filed if the correspondence is mailed or transmitted prior to expiration of the set period of time. Applicant's Response was signed and dated by Applicant November 30, 2007, two days after the required date. The Board provided Applicant proper notice of a pro se Applicant's responsibilities under the rules and regulations of the Board, including Rule 2.197, in its May 2, 2007 notice to the parties (see Exhibit A). As such, the Board should not consider untimely filed Applicant's Response and grant Magnadyne's Motion as unchallenged.

**B. Applicant Fails to Establish that the Extension will Cause any Prejudice**

Applicant's Response is full of factual inaccuracies and misrepresentations relating to Magnadyne's conduct during this proceeding and specifically relating to counsel's efforts to seek consent to extend its testimony period. Even if the Board looks past the fact that Applicant's Response was untimely filed, Applicant fails to state any reason that she will be prejudiced by the Board's granting of Magnadyne's Motion to extend the testimony period.

Contrary to Applicant's misrepresentations as to Magnadyne's conduct in this proceeding, Magnadyne's Motion is supported by good cause and is not abusing the privilege of extensions in this proceeding. In Paragraph 1 of Applicant's Response, Applicant states that Magnadyne "consistently requested extensions of time when his answers are due." (Applicant's Response, ¶1). Magnadyne's only request for an extension of time throughout this entire proceeding is the request at dispute. As previously stated in Magnadyne's Motion, this request was made to accommodate Magnadyne's testimony witness for this proceeding, Chief Executive Officer Barry Caren. (Magnadyne's Motion, ¶2).

Applicant's assertions in Paragraph 5 of Applicant's Response are factually inaccurate. Magnadyne's request for an extension of its testimony period is not the result of any delay or negligence on Magnadyne's part. Submitted as Exhibit B to this Reply is the Declaration of Matthew R. Mowers, one of the attorneys representing Magnadyne in this proceeding. This Declaration sets forth evidence of Magnadyne's good faith efforts to seek consent for this motion well in advance of the expiration of the testimony period but was unable to do so in light of Applicant's inability to provide an answer. Magnadyne was left to file the motion to extend as a result of Applicant's dilatory conduct.

Mr. Mowers contacted Applicant on October 31, 2007 and November 5, 2007, to request concurrence as to the extension when it became clear Mr. Caren would not be available for deposition prior to the expiration of Magnadyne's testimony period on November 10, 2007 (Mowers Declaration, ¶5). Applicant failed to return these calls until November 6, 2007 (not Saturday November 3, 2007 as stated by Applicant in Paragraph 5 of Applicant's Response). (Mowers Declaration, ¶6), Applicant indicated at that time that she was seeking the advice of counsel to assist her with the proceeding and would respond to Magnadyne's request within a

couple days. (Mowers Declaration, ¶6). Contrary to Applicant's assertions, Applicant never indicated to Mr. Mowers that the request for an extension was not acceptable to Applicant. (Mowers Declaration, ¶6). Rather, Magnadyne was forced to file its motion to extend the testimony period on November 8, 2007 to preserve its rights when Applicant failed to provide an answer to Magnadyne's counsel. (Mowers Declaration, ¶7).

Magnadyne's efforts to accommodate a pro se Applicant has resulted in an otherwise reasonable request for extension burdening the Board and further delaying the ultimate resolution of this matter. Magnadyne's Motion provides both parties additional time to schedule testimony of key participants in this proceeding and does not unduly burden or prejudice the Applicant.

Notably, Applicant's Response does not point to a single example of how Magnadyne's request for an extension of time will prejudice Applicant. Indeed, it would be disingenuous for Applicant to do so, given Magnadyne's efforts to accommodate Applicant's pro se status and her frequent attempts to hide behind this status to avoid participating in the opposition proceeding. Applicant continues to confound Magnadyne's counsel by the positions taken by Applicant in this matter.

Magnadyne noticed the depositions of Mr. Caren and Applicant for December 13, 2007. Applicant contacted Magnadyne's counsel on December 6, 2007, indicating that she would be unable to participate in either deposition due to a recent automobile accident. However, Applicant admitted in this telephone call that she would participate in the depositions once her health improved. (Mowers Declaration, ¶9). Magnadyne has agreed to reschedule the depositions at a mutually convenient time, but, Applicant has declined to provide Magnadyne's counsel with

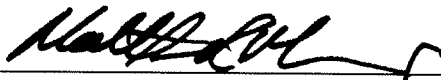
new dates to schedule the depositions until after this motion is resolved by the Board. (Mowers Declaration, ¶10).

Magnadyne has established good cause for its request for extension of the testimony period and that the Applicant will not be unfairly biased by this extension. Magnadyne respectfully requests the Board to grant its motion to extend Opposer's testimony period for sixty (60) days from the Board's decision in this matter.

Respectfully submitted,

**BROOKS KUSHMAN P.C.**

By:

  
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KEVIN J. HEINL (P32219)  
MATTHEW R. MOWERS (P55853)  
1000 Town Center  
Twenty-Second Floor  
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(248) 358-4400

*Attorneys for Opposer*

Dated: December 12, 2007

**CERTIFICATE OF SERVICE**

I certify that I served:

**OPPOSER'S REPLY IN SUPPORT OF MOTION FOR  
EXTENSION OF OPPOSER'S TESTIMONY PERIOD**

on December 12, 2007 by:

     delivering

✓ mailing (via First-Class mail)

a copy to:

Indiana Retana  
9435 Charleville Blvd.  
Beverly Hills, CA 90212

*Applicant*

*Carolyn Bielaniec*  
Carolyn Bielaniec

# **EXHIBIT A**



UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

vb

Mailed: May 2, 2007

Opposition No. 91175280

Magnadyne Corporation

v.

Movievision Inc.

Cheryl Butler, Attorney, Trademark Trial and Appeal Board:

Applicant's February 12, 2007 answer to the notice of opposition is accepted and made of record.

Discovery and trial dates remain as set in the institution order dated January 24, 2007.

**PRO SE INFORMATION**

It appears that applicant intends to represent itself in this proceeding. Applicant is reminded that it will be expected to comply with all applicable rules and Board practices during the remainder of this case. The Trademark Rules of Practice, other federal regulations governing practice before the Patent and Trademark Office, and many of the Federal Rules of Civil Procedure govern the conduct of this cancellation proceeding. Applicant should note that Patent and Trademark Rule 10.14 permits any person or legal entity to represent itself in a Board proceeding, though it

is generally advisable for those unfamiliar with the applicable rules to secure the services of an attorney familiar with such matters.

#### **SOURCES OF RELEVANT INFORMATION**

If applicant does not retain counsel, then applicant will have to familiarize itself with the rules governing this proceeding. The Trademark Rules are codified in part two of Title 37 of the Code of Federal Regulations (also referred to as the CFR). The CFR and the Federal Rules of Civil Procedure, are likely to be found at most law libraries, and may be available at some public libraries. Finally, the Board's manual of procedure ("TBMP") will be helpful.

On the World Wide Web, applicant may access most of these materials by logging onto <http://www.uspto.gov> and making the connection to trademark materials, including TTAB specific materials.

#### **OBSERVATIONS REGARDING SPECIFIC RULES**

One rule that applicant must pay particular attention to is Trademark Rule 2.119.<sup>1</sup> That rule requires a party filing any paper with the Board during the course of a proceeding to serve a copy on its adversary, unless the adversary is represented by counsel, in which case, the copy must be served on the adversary's counsel. With the paper that it filed with the Board, the party filing the paper must include "proof of service" of the copy. "Proof of

service" usually consists of a signed, dated statement attesting to the following matters: (1) the nature of the paper being served; (2) the method of service (e.g., first class mail); (3) the person being served and the address used to effect service; and (4) the date of service.

Also, applicant should note that any paper it is required to file herein must be received by the Patent and Trademark Office by the due date, unless one of the filing procedures set forth in Trademark Rules 2.197 and 2.198 is utilized. These rules are in part two of Title 37 of the previously discussed Code of Federal Regulations.

Files of TTAB proceedings can now be examined using TTABVue, accessible at <http://ttabvue.uspto.gov>. After entering the 8-digit proceeding number, click on any entry in the prosecution history to view that paper in PDF format.

The first revision of the second edition (March 2004) of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) has been posted on the USPTO web site at [www.uspto.gov/web/offices/dcom/ttab/tbmp/](http://www.uspto.gov/web/offices/dcom/ttab/tbmp/).

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<sup>1</sup> The Board notes in passing that applicant complied with this Rule in filing its answer.

## **EXHIBIT B**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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In the matter of  
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Applicant.	)	

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**DECLARATION OF MATTHEW R. MOWERS**

I, MATTHEW R. MOWERS, declare as follows:

1. I am of legal age, competent to testify, and have personal knowledge of the facts as set forth herein.
2. I am one of the attorneys representing Opposer, Magnadyne Corporation ("Magnadyne"), in the above-captioned proceeding.
3. I have had several conversations with Applicant, Indiana Retana, in an attempt to settle the present opposition. We have exchanged information and discussed a range of potential settlement alternatives without reaching amicable terms for settlement.

4. Ms. Retana has repeatedly informed us that she is without counsel and is relying on the Trademark Trial and Appeal Board to resolve this issue.

5. I telephoned Ms. Retana on October 31, 2007 to request consent for an extension of Magnadyne's testimony period to schedule the deposition of Mr. Barry Caren, Chief Executive Officer of Magnadyne, who was unavailable for deposition during Magnadyne's testimony period which was set to expire on Saturday, November 10, 2007. I again telephone Ms. Retana on November 5, 2007.

6. Ms. Retana telephoned me on November 6, 2007 stating that she was seeking an attorney to assist her with the proceeding and to understand Magnadyne's request. Ms. Retana informed me that she could not respond to my request for a couple of days until she received the advice of counsel. At no time did Ms. Retana affirmatively state to me that Magnadyne's request for consent for an extension of the testimony period was not acceptable to Ms. Retana.

7. When Ms. Retana failed to respond to my request, I filed a motion with the Board on November 8, 2007 to preserve Magnadyne's right to enter the testimony of Mr. Caren by extending Magnadyne's testimony period sixty (60) days from the November 10, 2007 to January 9, 2008.

8. I noticed the depositions of Mr. Caren and Ms. Retana for December 13, 2007 at the offices of Magnadyne on November 28, 2007 and served the notices to Ms. Retana via first class mail.

9. On December 5, 2007, Ms. Retana telephoned co-counsel Kevin Heintz and I to discuss the deposition notices. Ms. Retana stated that she did not believe she would be able to attend the depositions on December 13, 2007 due to injuries suffered in an automobile accident.

Ms. Retana further indicated that she intended to participate in the depositions and asked that she needed more time to evaluate her physical condition.

10. Mr. Heint and I telephoned Ms. Retana on December 10, 2007 to obtain determine whether Ms. Retana would in fact participate in the depositions scheduled for December 13, 2007. Ms. Retana indicated that she would not participate in the depositions on December 13, 2007 and would not provide an alternative date or time to reschedule the depositions.

I declare under penalty of perjury under the laws of the United States, that the foregoing is true and correct.

Executed this 12th day of December, 2007.

  
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Matthew R. Mowers